

1-27-10 Status Conference Transcript.txt

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

08 CR 181

MARIO LEVIS,

Defendant.

New York, N.Y.
January 27, 2010
11:30 a.m.

Before:

HON. THOMAS P. GRIESA,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
DANIEL A. BRAUN
WILLIAM J. STELLMACH
Assistant United States Attorneys
JASON ANTHONY, SPAUSA
BLACK, SREBNICK, KORNSPAN & STUMPF
Attorneys for Defendant
BY: ROY BLACK
HOWARD SREBNICK
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(In chambers, all counsel appearing by telephone)
THE COURT: Who's going to be speaking for the
government?

MR. BRAUN: Judge, this is Daniel Braun speaking now;
I believe it's going to be me primarily. I'm here with William
Stellmach, also from the United States Attorney's Office. And
joining us by phone from Washington, D.C., is Jason Anthony who
is a special assistant United States attorney on this case and
also an attorney with the SEC in Washington.

THE COURT: And then who's going to speak for the
defense?

MR. BLACK: Good morning, your Honor. This is Roy
Black. I will be speaking on behalf of Mr. Levis, and I'm here

Page 1

14 1-27-10 Status Conference Transcript.txt
15 with Mr. Srebnick and Ms. Neyra.
16 THE COURT: And you're speaking from Miami, right?
17 MR. BLACK: Yes, sir.
18 THE COURT: Okay. Let's go over -- there's an
19 application to adjourn the trial. The trial is now set for
20 what?
21 MR. BLACK: March 22, Judge.
22 THE COURT: And when did we set that date?
23 MR. BRAUN: It was set by a phone conference that we
24 had in August of last year with your Honor. I don't have the
25 precise date in front of me, but it was mid to late August when
we were all on the phone with the Court. At that time the
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3

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1 trial had been sent for September, but we adjourned it until
2 the March 22 date at that time.
3 MR. BLACK: Your Honor, the date was August 18.
4 THE COURT: All right. I think you better, each time
5 you speak, say who it is because we've got a reporter here and
6 she can't see who's speaking.
7 why is there a request for a further adjournment?
8 MR. BLACK: Your Honor, this is Roy Black. I will
9 address this to give you just a sense of what our problem is.
10 This is, of course, as your Honor knows, a securities fraud
11 case. Our defense is going to be to prove that the financial
12 figures reported by Doral, who was the client's business,
13 devalued -- made the devaluations of the interest-only asset
14 called an interest-only strip that Mr. Levis endorsed was
15 reasonable, and this included all the caps, hedges, and
16 protection of the interest income from this asset, which is
17 called an interest-only strip.
18 Those financial figures that were given to the public,
19 we want to prove that they were accurate. This latest
20 production, the small part of it we have been able to read,
21 proves that matter. Our expert tells us, after going through
22 10,000 of the pages, that he has located pages which will
23 bolster his opinion that the reported financial figures were
24 accurate. We have gone through it ourselves, the portion that
25 we have been able to access, which is a small portion of them
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4

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1 at this date, show that there is Brady material here.
2 The government tells us they have not looked at these
3 documents so they cannot tell us whether there's Brady in it or
4 not. But what the government says is that it is not important
5 for us to read them and prepare them for our defense even
6 though they haven't looked at it.
7 And just to give your Honor one example because I
8 think it's important to get the details, there is a document
9 which we just got called with a Bates No. PWC-RG-079886 which
10 is an R&G financial document which says I have reviewed the
11 Doral announcement on Bloomberg as you suggested. My bottom
12 line is that the switch to the forward rate curve for valuation
13 purposes is unwarranted and sets up an almost certain reversal
14 of some portion of the write down they are going to take.
15 Savvy investors should figure this out suggesting the bottom is
16 at hand in the stock line. Joe Sandoval and PWC, who is our
17 accountants, have been correct in recognizing its pyramid only
18 as the actual spot life or increases.

1-27-10 Status Conference Transcript.txt

19 I read that to you because our expert says that is
 20 firm evidence that the valuation being used by Doral prior to
 21 this was reasonable and R&G was also selling interest-only
 22 strips and was dealing with Doral doing this. So clearly there
 23 is important information in these documents for us to look at.
 24 Now, over December 22 through January 5 of this year,
 25 the government provided us with this which purports to hold
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5

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1 800,000 pages of R&G and Firstbank materials. Firstbank bought
 2 \$6 billion of these loan matters and mortgages from Doral. At
 3 first we were only able to access 170,000 of them. For the
 4 last month we've been asking the government for better discs.
 5 This month they gave us an additional 30,000. So far we have
 6 only in 30 days been able to look at or actually get documents
 7 of 200,000 of the 800,000, in other words, are acceptable for
 8 our reasons.

9 We have done everything we can with the government,
 10 talking to them, trying to resolve it, trying to get these
 11 discs. We even asked the government is there somebody in your
 12 team we can talk to who can describe what's in this material so
 13 we can get a head start on it, and they said no one from their
 14 side has looked at it. And we even asked them has anybody
 15 looked at it for Brady so we can see if there are things that
 16 are favorable to Mr. Levis, and it has not been examined for
 17 Brady evidence.

18 So we have examined personally some 10- to 20,000
 19 pages of the 200,000 or the 170,000 that was accessible to us,
 20 and we have found Brady materials in this. Last night at
 21 5:15 p.m. we got the government's response. We had filed this,
 22 our letter, about two and a half weeks ago, and they say for
 23 the first time this is not Rule 16, and I believe that the
 24 record will show otherwise because the government stated back
 25 on May 26 in a conference call with us, with all counsel on the
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1 line from the government, they said they had new issues coming
 2 up, they were producing additional discovery which included
 3 55,000 Firstbank and R&G records. We then confirmed that in an
 4 email the same day to Jason Anthony which we said, among other
 5 things, you were giving us Firstbank and R&G records of 55,000
 6 documents.

7 MR. ANTHONY: Mr. Black, I want to confirm that Maria,
 8 who's been sending things, has been sending them to the wrong
 9 email address, and I have never received any emails from Maria.
 10 The most recent email from Maria that was sent, I believe, was
 11 sent to someone at Bureau of Prisons. So I just want to make
 12 sure that's clear on the record.

13 MR. BLACK: I think we have a response from you on
 14 that.

15 MR. ANTHONY: On some you do, but there are numerous
 16 emails from Maria that I have never received, and I think we've
 17 made that clear to her in the past.

18 MR. BLACK: Did you get this one about the 55,000
 19 documents?

20 MR. ANTHONY: I'd have to go back and look. I have
 21 not looked at this point in time. In particular, it's a long
 22 time ago, but there are occasions where -- in fact, the most
 23 recent emails that you have sent have gone to somebody else or

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 24 an account that I don't actually have access to.
 25 MR. BLACK: Nevertheless, on May 27, your Honor, we
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 1 filed a letter with the Court and this letter was reviewed by
 2 the government before it was sent to you, and on May 27 we
 3 asked for the adjournment of the September 14 trial date and we
 4 say in the letter it was represented by the government this
 5 morning that there's going to be additional discovery in a
 6 concordance database and a hard copy and it says, Firstbank,
 7 39,500 documents, pages unknown, and R&G, 14,800 documents,
 8 pages unknown.
 9 Now, we didn't even know they existed as discovery at
 10 that time. Since then, we have been asking time and time
 11 again. There is another email which we sent on August 17 to
 12 Mr. Anthony, to Mr. Braun, and Mr. Stellmach in which we say,
 13 During our call earlier, I represented to Bill and Dan the
 14 following, the defense is missing approximately 55,560
 15 documents including the following: Federal Reserve; Firstbank,
 16 39,500; and R&G, 14,800.
 17 We then follow up again August 26. We say we have no
 18 objections to the protective order. Where are the Firstbank
 19 documents? Are they coming this week or next?
 20 On November 3 our IT man sends an email to Mr. Braun.
 21 I have been told by Mr. Anthony that we need to follow up with
 22 you in regards to the following production sets: Federal
 23 Reserve, Firstbank, R&G. The government, Mr. Stellmach, sends
 24 us an email on November 3 that the protective order is signed,
 25 the databases are ready to go.

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 1 We send another email to the government on November 11
 2 saying we've received the Federal Reserve. Also, I was under
 3 the impression there are remaining Firstbank and R&G materials
 4 that were to be produced. Specifically, my notes reflect that
 5 we had about 39,500 Firstbank records and 14,800 R&G records.
 6 Could you please confirm? And we get an email back from
 7 Mr. Braun saying we will follow up on this issue.
 8 Then we get another email November 13, 2009 from
 9 Mr. Braun. Because I had only limited involvement in issues
 10 relating to the protective orders, can you tell me whether
 11 there's an order in place for discovery materials obtained from
 12 the banks that purchased loan pools from Doral, such as
 13 Firstbank and R&G? We email back. I think that they had
 14 already given us some R&G and Firstbank materials without the
 15 protective order. But they emailed us on December 4 saying,
 16 we're going to get you a separate protective order for the R&G
 17 and Firstbank docs early next week.
 18 And then on November 23 from Mr. Stellmach, on the R&G
 19 and Firstbank documents, we're going to send another protective
 20 order. Then they send us the proposed one on the 7th. The
 21 same day we say it's fine with us. And then they submit to the
 22 Court, which the Court signed, a protective order which says as
 23 follows: Documents provided to the United States Securities
 24 and Exchange Commission by R&G Financial Corporation and
 25 Firstbank may be disclosed to the defendant by the government

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1-27-10 Status Conference Transcript.txt

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pursuant to Rule 16 and are deemed confidential information and the government prepared that.

We then immediately sent another email -- not immediately, two weeks later we haven't received the documents and on the 21st saying when should we expect to get the R&G and Firstbank materials now that the Judge has signed the protective order? And we still think it's only 55,000 at that time.

Then on December 22 we receive a letter dated December 21 which the government says, Pursuant to Rule 16 and subject to the terms contained in the protective order signed by the Judge on December 14, we're giving you all these discs. And we have looked at the discs and we're only able to access 20 percent of the discs. So what we ask for is no longer 55,000; it is now 800,000 documents. Your Honor, we're doing everything we can to look at these. We think that -- and the government is only correct that 30,000 of the some 700,000 or 600,000 that we have been unable to access.

We ask that the government be ordered to immediately give us discs that we can access and that the Court set a date 30 days from now for a status conference and to take the trial off the March 22 date because there's simply no way we can look at 800,000 documents by March 22, particularly since we don't even have 80 percent of them yet.

THE COURT: Well, what does the government say?

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10

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MR. BRAUN: Your Honor, this is Daniel Braun speaking for the government. We submitted a letter yesterday setting forth our bases for opposing this request for an adjournment, and I will address that now, as well, but if for any reason -- I don't want to waste the Court's time because we put a lot of this on paper, so please let me know if I'm doing that.

THE COURT: I have not read the letter.

MR. BRAUN: Okay. Thank you for letting me know that, Judge. I appreciate that.

Your Honor, I think the dispute between the defense and the government over whether an adjournment is warranted because of this production of materials really reflects a deeper dispute about what this case is about, so I'd like to begin by addressing that because I think it's important to understand our position and the dispute about the importance of these documents or, in our view, the lack of importance of the documents. I think what, again, is underneath that difference of perspective is that in our view, Mr. Levis appears to be seeking time to prepare a defense to charges that he is not facing --

THE COURT: Can I interrupt?

MR. BRAUN: -- as stated in his letters, and as he's explained again on the conference today, their defense seems to be to demonstrate that Doral's internal accounting, the way in which it put a value on these interest-only strips, was

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11

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reasonable and defensible.

Their defense is we put a number out there to the market saying what these assets were worth, and what we want to be able to do is to show that that number was a reasonable and

1-27-10 Status Conference Transcript.txt

defensible number. In the government's view, that's not what this case is about, and we think our view is consistent with the indictment.

In our view this case is about the way in which the defendant, Mario Levis, lied to the marketplace about what this asset was and what Doral had done. We think that Mr. Levis and have alleged that Mr. Levis made a series of misrepresentations to the marketplace that were important. Our case is not that Mr. Levis lied by saying this asset was worth X when in reality X is not a defensible number.

Our case is that Mr. Levis lied by telling everybody that Doral's number was being checked independently by two sources that in our view were not at all independent and were not legitimate. We further have alleged that Mr. Levis, in a number of instances, lied to the marketplace by saying that even if interest rates continue to increase, the value of this asset is protected because we have caps in place in our contracts.

The contracts that have created this asset have provisions in them that protect the value of the asset even if interest rates continue to go up. And the value of this asset

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12

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was dependent on interest rates, right? Doral is originating mortgage loans. It's making mortgage loans in Puerto Rico. It has been pooling those loans into large pools, \$50 million, \$200 million up to a billion dollars, and selling them to banks like Firstbank.

Under the terms of these deals, which are not particularly complicated, and our letter includes a sample agreement, Judge, as an exhibit between Doral and one of the banks that bought these loans. It's a ten-page document. There's a lot of money involved, but the terms of these deals are not particularly complex.

Under the terms of the deal, Doral agrees to split the interest payment that is being made on all of the mortgage loans with the purchaser of the loan pools. So they say to an institution like Firstbank, you're going to buy this pools of loans and all of the interest payments are going to be made on the loans are going to be split between you and us.

The part that you're going to get is called the pass through rate or sometimes the yield, and that is going to be calculated based on an interest rate, LIBOR, the London Interbank Offered Rate. It's a rate that financial institutions use to loan money to each other plus a fixed percentage. So for example, Judge, LIBOR plus a percentage and a half. And that's the portion of the interest rate that the banks like Firstbank get and Doral gets to keep the rest and

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13

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that's this asset, the IO.

So if interest rates go up, your Honor, the purchaser of the loan pools get more and Doral gets less. And as interest rates started to go up in 2003 and especially in 2004, people started to get worried that the value of Doral's asset would be impaired. These worries were increased considerably in January of '05 when Doral told everybody that it had to write down the value of its IOs by close to a hundred million dollars. Then people began to worry that's it's going to

1-27-10 Status Conference Transcript.txt

10 happen again. Is the value reliable or are further increases
11 in interest rates, which were widely predicted at that time,
12 going to further diminish the value of this asset?

13 And it was in that context when Mr. Levis was telling
14 people, No, don't worry, we have caps in place. The pass
15 through rate that is going to be applied under these contracts,
16 the amount of the interest payments that are going to be given
17 to the purchasers of the loan pools are capped so that even if
18 interest rates go up, our spread, our piece of the interest
19 payments being made on these large pools of loans are not going
20 to substantially diminish. We are protected.

21 Our case is about those misrepresentations. We are
22 alleging that Mr. Levis lied to everybody. We are not basing
23 our case on an allegation that Doral's internal accounting was
24 faulty or inaccurate. Our case is about Mr. Levis's lies to
25 the marketplace, and so we appear to be on an entirely

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14

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1 different page from the defense. We understand why they might
2 want to defend the case that they've described, but that's not
3 the case that's charged, and it's not the case that we intend
4 to present. So I think that frames this issue and that's why
5 our view of the significance of these documents that have been
6 turned over is very different than theirs.

7 Now, let me turn a bit to the history and clear one
8 thing up, as well, and we really have tried to clear this up
9 with the defense in our conversations with them. What we have
10 turned over to them are computer discs containing documents
11 that were obtained by the SEC in a regulatory investigation
12 that focused on Firstbank and R&G. Our office did not
13 participate in that investigation, and Jason Anthony of the
14 SEC, who is on the phone with us, was walled off from that
15 investigation because he was participating in the criminal case
16 here.

17 So, we don't have a detailed understanding of the
18 SEC's regulatory inquiry at Firstbank and R&G because we did
19 not participate in it. At some point in time we obtained CDs
20 and, frankly, Mr. Stellmach and I were not on the case at that
21 time our office obtained the CDs. But we obtained discs from
22 the Securities and Exchange Commission that contained materials
23 that the SEC had obtained in its regulatory investigation of
24 Firstbank and R&G.

25 If we referred to these materials as Rule 16 in the

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15

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1 past, and as we say in our letter, and I understand your Honor
2 has not read it, but the letter states quite clearly that to
3 whatever extent we inadvertently called this discovery, using
4 the term loosely, and we've explained this to the defense,
5 certainly, it was an error, and it was a result of us just
6 using the term loosely to refer to materials that we had that
7 we intended to turn over. We turned them over because the
8 defense asked us to.

9 The defense also told us, and we have no reason
10 question the representation at all that our predecessors on
11 this case here in the U.S. Attorney's Office had agreed to turn
12 these materials over. We saw no reason not to turn them over.
13 Our philosophy is always why not turn it over. And so we
14 agreed to turn these discs over.

Page 7

1-27-10 Status Conference Transcript.txt

15 We have not made any determination and have never made
16 a determination that they fall within the scope of Rule 16. We
17 are in the process now of gathering up and identifying and
18 pre-marking exhibits that we intend to use at trial. At this
19 time we have not identified a single exhibit from the discs
20 that we intend to use at trial.

21 With the R&G documents, we think it is extremely
22 unlikely that we will identify any such materials that the
23 government will use at trial. With respect to the Firstbank
24 documents, we don't know of any documents now on those discs
25 that we intend to use as an exhibit, your Honor, but we do

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16

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1 think there's a possibility that we will identify a handful of
2 documents. We were talking about this yesterday, perhaps ten,
3 20 documents from all of those on the discs that we will use
4 potentially at trial even though we haven't made the decision
5 to do so.

6 Now, if and when we identify an exhibit that we intend
7 to introduce at trial, your Honor, we will certainly identify
8 it specifically for the defense and we will provide them with a
9 premarked copy of it, as your Honor has asked us to do. But we
10 have not decided that we're going to use this at trial, as I a
11 just explained.

12 We also haven't identified a way in which it's
13 material to the defense and I believe that probably that goes
14 back, Judge, to our understanding of what this case is about
15 and the very different theory that we've heard from Mr. Black
16 both on the phone today and in his letters. We just appear to
17 be talking about different trials.

18 So with respect to the Firstbank documents, we
19 understand that the terms of the transactions that Doral
20 entered into with Firstbank are relevant to this case. We have
21 produced, way back, going back to the early phases of discovery
22 in this case in 2008, numerous documents reflecting the terms
23 of those transactions. All of the documents that the
24 government obtained from Doral, and Doral, of course, your
25 Honor, maintained copies of its contracts with Firstbank.

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17

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1 So to the extent we have those materials, Doral's
2 contracts with Firstbank, they've been turned over. Other
3 documents that were in Doral's possession reflect the terms of
4 its transaction with Firstbank, as well, certain materials that
5 Doral was using for its evaluations and accounting reflect the
6 terms of its agreements with Firstbank, those have been turned
7 over.

8 Now, the defense has said to us that Doral's records
9 were incomplete and that additional contracts might exist.

10 MR. ANTHONY: I want to clarify. Some of the
11 contracts we turned over as part of our initial production
12 actually were contracts that we were able to find in other
13 production sets, including the first production set. To the
14 extent that we, the government, are aware of Doral contracts
15 with Firstbank, we have attempted to collect those, and those,
16 I believe, have already been submitted to the defense as part
17 of the first production made to them.

18 MR. BRAUN: Thank you, Jason. I appreciate that.
19 And, your Honor, I should be clear, Mr. Anthony is particularly

1-27-10 Status Conference Transcript.txt
 20 helpful in this regard because I came on to the case in the
 21 summer of last year. Mr. Stellmach, I think, was on the case a
 22 couple months before I was in the spring. But Mr. Anthony
 23 really has the history of this better than either of us here in
 24 New York.

25 So, bottom line, we've turned over all of the
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 1 Firstbank Doral contracts and certainly all of the R&G Doral
 2 contracts that we've been able to obtain from any source. I
 3 suppose we cannot exclude the possibility that there may be a
 4 contract or more than one contract between Firstbank and Doral
 5 that might only exist from Firstbank records, but these
 6 documents are not particularly hard to identify. And to the
 7 extent we can identify them and turn them over, we will.
 8 Those contracts, from everything we've learned over
 9 the course of this investigation, are not going to be
 10 materially different from those that have already been turned
 11 over. It will be a different pools of loans. The detail of
 12 the terms might be different in one regard or another, but
 13 nobody has suggested to us, for example, until perhaps
 16 yesterday, although we're not sure we understand Mr. Black's
 17 letter of January 26 in this regard, but until possibly the
 18 exception of yesterday, the government is not aware of any
 19 contracts between Firstbank and Doral that would contain
 20 provisions indicating the existence of a cap on the past due
 21 rate of the sort that Mr. Levis described to the market.
 22 Now, in his letters, Mr. Black says we have found
 23 Brady material. We have found documents confirming that there
 24 were caps in place that prevented Doral's spread on this asset,
 25 the amount of the interest Doral was getting on this asset,
 from going negative, caps that protected Doral from having to
 experience a negative cash flow --

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19

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 1 THE COURT: Look, I've got to interrupt. This is
 2 something that can't be done on the phone.
 3 MR. BRAUN: Okay.
 4 THE COURT: It just can't be. And the thing is that
 5 regardless of the timing of the trial, it is certainly
 6 important to have a definition of the issues to be tried, and
 7 trying to discuss this on the telephone when I can't interrupt
 8 and so forth, it just doesn't do the job.
 9 I have two reactions on the trial date. One is that
 10 there has been a great deal of time for this case to be
 11 prepared, and March 22 is even a substantial amount of time off
 12 from today. And I know from experience and you all know from
 13 experience that there can be a lot of pages of documents, but
 14 800,000 pages or 50,000 pages are not going before a jury.
 15 It's a matter of selecting and, of course, that's what the
 16 defense is trying to do is to go through and make a selection.
 17 But I am not convinced, unless the documents simply now are not
 18 available, not readable, I'm not convinced that it is not
 19 possible to simply go through even a large number of documents
 20 and find those probably few documents which are germane.
 21 So, I'm not ready to adjourn the trial, but I think
 22 more important is to, as quickly as we possibly can, have a
 23 conference in New York City in court and go over these issues.
 24 Regardless of when the trial is held, the issues have to be

1-27-10 Status Conference Transcript.txt
defined. And if there's something that is proposed by the
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20

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1 defense which is not germane, there will be an objection and
2 the Court will sustain the objection. If it is germane, the
3 court will overrule the objection.
4 But that has to, as far as I can see, that really has
5 to be planned, and it ought to be planned at the earliest
6 possible moment. So I would ask you to work with my deputy
7 clerk to set a time for a conference in New York just as soon
8 as you possibly can do it, and we really can't resolve this on
9 the telephone.

10 MR. BLACK: That's fine for us. We'll come up any day
11 next week.

12 MR. BRAUN: And, your Honor, the government would
13 welcome that opportunity as well. We're perfectly happy to
14 remain on the line off the record and speak to Mr. Beale to get
15 a date or to remain available to him after this conference on a
16 separate call. I think with all of us assembled like this,
17 it's a good opportunity for us to agree upon a convenient date
18 and the government will accommodate anything the Court has in
19 mind.

20 THE COURT: We can stay on the record. Mr. Beale is
21 here and he's got the book, so let's just work out a date. I'm
22 pretty flexible next week. Who do you all propose?

23 MR. BLACK: I'm good any day except Monday.

24 MR. BRAUN: And, your Honor, this is Daniel Braun. We
25 are fine -- Mr. Anthony, are you there in Washington?

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21

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1 MR. ANTHONY: I actually plan on being up there
2 Tuesday through Friday.

3 MR. BRAUN: Tuesday through Friday Mr. Anthony will be
4 here from Washington, which is an advantage for us. And I
5 think the only conflict we have and, Mr. Anthony, correct me if
6 I'm wrong on this, would be that Tuesday morning -- excuse
7 me -- that Wednesday morning the 3rd.

8 MR. ANTHONY: That is correct.

9 MR. BRAUN: Wednesday morning the 3rd. Between
10 Tuesday and Friday, we are entirely at the Court's pleasure.

11 THE COURT: For the people coming from Miami, what
12 about Tuesday?

13 MR. BLACK: That's fine, your Honor. Could we do
14 Tuesday first thing in the afternoon?

15 THE COURT: Let's do it in the afternoon, 2:15 in the
16 afternoon.

17 MR. BLACK: Fine. Thank you, your Honor. That's
18 perfect for us.

19 THE COURT: We'll see you then.

20 MR. BRAUN: Works well for the government. Thank you,
21 your Honor.

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